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APR 10 2012

OFFICE OF PETITIONS

In re Patent No. 8,103,542 :
Davis et al. : DECISION ON REQUEST FOR
Issue Date: Jan. 24, 2012 : RECONSIDERATION OF PATENT
Application No. 09/697,009 : TERM ADJUSTMENT
Filed: Oct. 25, 2000 : and
Attorney Docket No. : NOTICE OF INTENT TO ISSUE
098888-1561 : CERTIFICATE OF CORRECTION

This is a decision on the petition under 37 CFR 1.705(d) filed on March 21, 2012, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three thousand one hundred thirty (3130) days. For the reasons stated above, this petition is treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that that the term of the above-identified patent is extended or adjusted by two thousand nine hundred eighty-eight (2988) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two thousand nine hundred eighty-eight (2988) days is **GRANTED TO THE EXTENT INDICATED.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" day period, the over three year period begins on October 26, 2003, and ends on August 18, 2011, the day before the RCE was filed, and is 2854 days. See 35 U.S.C. 154(b)(1)(B)(i). Any time consumed by appellate review, however, is not included in the calculation of 37 CFR 1.702(b). See 35 U.S.C. 154(b)(1)(B)(ii). On March 24, 2004, a notice of appeal

was filed. On August 13, 2004, 143 days after the date the notice of appeal was filed, a non-final Office action was mailed. On May 5, 2005, a notice of appeal was filed. On March 16, 2011, 2142 days after the notice of appeal was filed, a decision of the Board of Patent Appeals and Interferences ("Board Decision" was mailed. Accordingly, the excluded period is 2285 days (143 + 2142 days), and the non-excluded "B" period is 569 (2854 - 2285) days.

37 CFR 1.703(f) states, in part, that to the extent that periods of delay attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section.

The 305 days of "A" delay from July 17, 2006, the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on May 17, 2007, the date of mailing of a supplemental examiner's answer under § 41.39 of this title, overlaps with the 2142 days of delay pursuant to 37 CFR 1.703(e), beginning on May 5, 2005, the date a notice of appeal was filed, and ending on March 16, 2011, the date the Board Decision was mailed.

The patent term adjustment is revised to 2988 days (798 days of "A" delay + 569 days of "B" delay - 305 overlapping days - 216 days of applicant delay + 2142 days of appeals delay).

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two thousand nine hundred eighty-eight (2988) days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patent an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being referred to the Certificate of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two thousand nine hundred eighty-eight (2988) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 8,103,542 B1

DATED : Jan. 24, 2012

DRAFT

INVENTOR(S) : Davis et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 2419 days.

Delete the phrase "by 2419 days" and insert – by 2988 days--